

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
EASTERN WASHINGTON REGION  
STATE OF WASHINGTON

MORNINGSIDE INVESTMENTS, LLC,

Petitioner,

v.

CITY OF SPOKANE,

Respondent,

and

NORTH INDIAN TRAIL NEIGHBORHOOD  
COUNCIL,

Intervenor.

**CASE No. 17-1-0001**

**ORDER GRANTING  
MOTIONS TO DISMISS**

**I. INTRODUCTION**

This matter comes before the Board pursuant to two motions filed by the parties. The Board had before it the following submittals from the parties:

- Respondent City of Spokane's Motion to Dismiss for Lack of Jurisdiction, February 24, 2017;
- North Indian Trail Neighborhood Council's Dispositive Motion to Dismiss All Issues for Lack of Jurisdiction, February 24, 2017;
- Morningside's Opposition to City of Spokane's Motion to Dismiss, March 1, 2017;
- Morningside's Opposition to North Indian Trail's Motion to Dismiss, March 3, 2017;
- City of Spokane's Request for Leave to File Reply and Reply to Petitioner's Opposition to the City's Motion to Dismiss, March 6, 2017;

- North Indian Trail Neighborhood Council's Request For Leave To File Reply And Reply To Morningside Investments' Response To North Indian Trail Neighborhood Council's Motion To Dismiss, March 9, 2017.

City of Spokane's Request for Leave to File Reply and North Indian Trail Neighborhood Council's Request for Leave to File Reply are both granted.

Petitioners do not challenge any formal legislative action such as an ordinance or resolution amending the comprehensive plan since there was no such legislative action; rather, Petitioners challenge Findings of Fact and Conclusions of Law explaining why the City declined to adopt any ordinance in response to Petitioner's application.

## II. LEGAL STANDARDS FOR MOTIONS TO DISMISS

The legal standards for deciding motions to dismiss are derived from the GMA, Administrative Procedure Act, and analogous Superior Court Civil Rules. The Board is authorized by the GMA to dismiss a petition for review if the petition is frivolous or if the Board finds that the person filing the petition lacks standing.<sup>1</sup> The Board must also dismiss a petition when the Board determines it lacks subject matter jurisdiction, since the Board has no power to adjudicate that particular case.<sup>2</sup>

Under analogous Superior Court Civil Rule 12(b), a Motion to Dismiss should be granted when (A) the GMHB concludes it lacks subject matter jurisdiction or (B) viewing the facts in a light most favorable to the non-moving party, petitioners fail to state a claim upon which relief can be granted.

Under the Board's Rules of Practice and Procedure, dispositive motions on a limited record to determine the board's jurisdiction, the standing of a petitioner, or the timeliness of the petition are permitted. The Board rarely entertains a motion for summary judgment except in a case of failure to act by a statutory deadline. WAC 242-03-555(1).

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<sup>1</sup> RCW 36.70A.290(3).

<sup>2</sup> See *Crosby v. Spokane County*, 137 Wn.2d 296, 301 (1999) [If a court lacks jurisdiction over a proceeding, it "may do nothing other than enter an order of dismissal"]. See also *Griffith v. City of Bellevue*, 130 Wn.2d 189, 196 (1996).

### III. ANALYSIS AND DISCUSSION

The Growth Management Hearings Board is a creature of the Legislature, without inherent or common-law powers and, as such, may exercise only those powers conferred by statute, either expressly or by necessary implication.<sup>3</sup> As a quasi-judicial tribunal, the Board's powers are restricted to a review of those matters specifically delegated by statute.<sup>4</sup> The power of an administrative tribunal to fashion a remedy is strictly limited by statute.<sup>5</sup>

The Board's jurisdictional authority to act is established by RCW 36.70A.280 and RCW 36.70A.290, which must be read together. RCW 36.70A.280(1) states in pertinent part: "The growth management hearings board shall hear and determine only those petitions alleging . . . [t]hat . . . a . . . city planning under this chapter is not in compliance with the requirements of this chapter." Under RCW 36.70A.290(2), the petition for review must relate to whether or not **an adopted comprehensive plan, development regulation, or permanent amendment thereto**, is in compliance with the goals and requirements of the GMA.

In *Wenatchee Sportsmen Association v. Chelan County et al.*, 141 Wn.2d 169, 178 (2000), the Supreme Court held: "unless a petition alleges that a comprehensive plan or a development regulation or amendments to either are not in compliance with the requirements of the GMA, a GMHB does not have jurisdiction to hear the petition."

In the present case, the Petition for Review dated January 4, 2017, presents seven legal issues for review by the Board. Six out of the seven issues fail to allege that an adopted comprehensive plan, development regulation, or permanent amendment thereto are not in compliance with the requirements of the GMA. Accordingly, Issues 1 and 3 through 7 must be dismissed as beyond the Board's subject matter jurisdiction.

Issue 2 states: "By its failure to designate Petitioner's property high density residential, does Respondent's Comprehensive Plan violate §36.70A.020 (1)-(5) and (9) of

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<sup>3</sup> *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 558 (1998). Administrative agencies have the implied or incidental powers that are reasonably necessary in order to carry out the powers expressly granted. *Id.* at 564.

<sup>4</sup> *Viking Properties, Inc. v. Holm*, 155 Wn.2d 112, 129 (2005).

<sup>5</sup> *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 558 (1998).

1 the GMA?" This issue statement refers only to GMA Planning Goals that are to guide  
2 development of the comprehensive plan and development regulations but this issue  
3 statement fails to identify any statute imposing a duty on the City of Spokane to designate  
4 Petitioner's property high density residential, nor does it identify any GMA requirement at all  
5 beyond the planning goals. Accordingly, Petitioner fails to state any claim upon which relief  
6 can be granted. Issue 2 must be dismissed.  
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#### 8 IV. ORDER

9 Respondent City of Spokane's Motion to Dismiss for Lack of Jurisdiction is **Granted**.  
10 North Indian Trail Neighborhood Council's Dispositive Motion to Dismiss All Issues  
11 for Lack of Jurisdiction is **Granted**.  
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13 The Petition for Review is dismissed and this case is closed.

14 DATED this 23rd day of March, 2017.  
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Raymond L. Paoella, Board Member

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William Roehl, Board Member

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Deb Eddy, Board Member  
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25 **Note: This is a final decision and order of the Growth Management Hearings Board**  
26 **issued pursuant to RCW 36.70A.300.<sup>6</sup>**  
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<sup>6</sup> Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all  
31 parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840.  
32 A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days  
as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be  
served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC  
242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the  
Growth Management Hearings Board is not authorized to provide legal advice.